

United States Senate

WASHINGTON, DC 20510

September 9, 2025

The Honorable Adam Telle
Assistant Secretary of the Army
for Civil Works
U.S. Department of Defense
108 Army Pentagon
Washington, DC 20310

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Assistant Secretary Telle and Administrator Zeldin:

We write to request more information regarding the implementation of President Trump's Executive Order titled "Accelerating Federal Permitting of Data Center Infrastructure" as it relates to the Clean Water Act. The executive order and the administration's associated "AI Action Plan" include directives that could undermine environmental protections and impair water quality if such directives are implemented without sufficient respect for the statutory imperatives of the Clean Water Act.

We believe that America must maintain its competitive edge in artificial intelligence and remain the world leader in innovation. To do that, we need adequate data center infrastructure, research and development infrastructure, and energy infrastructure. This infrastructure must be developed responsibly and in accordance with federal environmental statutes. With thoughtful policy changes, we can build this infrastructure both swiftly and responsibly. It is important that we do not repeat the mistakes of the Industrial Revolution that necessitated the creation of the EPA in the first place.

As you know, the Clean Water Act is a bedrock federal law that was enacted to protect our nation's bodies of waters from pollution. Section 404 specifically prohibits the discharge of dredged or fill materials into waters of the United States, including wetlands, unless the entity discharging the material has a permit or unless the activity is not subject to Section 404 regulations.

The July 23 executive order includes a directive to the Assistant Secretary of the Army for Civil Works to "review the nationwide permits issued under section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344)...to determine whether an activity-specific nationwide permit is needed" for data center projects or component projects, including energy infrastructure.¹ The Corps uses nationwide permits (as opposed to individual permits) under Section 404 of the Clean Water Act for activities that "have no more than minimal individual and cumulative adverse environmental effects."² This is because projects approved under nationwide permit categories do not have to

¹ <https://www.whitehouse.gov/presidential-actions/2025/07/accelerating-federal-permitting-of-data-center-infrastructure/>

² <https://www.federalregister.gov/documents/2025/06/18/2025-11190/proposal-to-reissue-and-modify-nationwide-permits>

undergo the kind of individualized, more scrutinized review that is required of projects not eligible for nationwide permits. Projects approved under a nationwide permit also undergo less public participation.

Further, the administration's AI action plan includes a recommended policy action to ensure that a nationwide permit, if adopted, "does not require a Pre-Construction Notification".³ Pre-construction notifications (PCNs) are required for some nationwide permit categories to ensure that the projects they cover would indeed conform to the criteria of a nationwide permit and that the activity's environmental impacts would be truly minimal. Data centers could be eligible for a current nationwide permit, but only if the footprint is small (impacting half an acre of waters of the United States) and only with the submission of a PCN.

Should the Corps allow significant data center projects and component projects to qualify for a nationwide permit, relieve them of the notification requirement, or both, the Corps would risk funneling future data center projects through a process not intended for projects of their scope and potential environmental impact. This would allow projects that are expected to pose more than minimal environmental impact to bypass the environmental review and public scrutiny that is required by the Clean Water Act.

Further, PCNs can be an important tool for ensuring that wildlife species protected under the Endangered Species Act (ESA) are not jeopardized by a proposed project. Indeed, the Corps states that the ESA and implementing regulations "require non-federal permittees to submit PCNs for any activity that might affect listed species or designated critical habitat."⁴

On June 18, 2025, USACE released a proposed rule to reissue and modify the nationwide permits. It is unclear how the administration's "AI Action Plan" and the president's executive order, which were published after the proposed rule, may affect the development of this rulemaking.

For EPA, the President's executive order directs the agency to "assist in expediting permitting... by developing or modifying regulations promulgated" under the Clean Water Act, among other environmental statutes. The administration's action plan also calls for "streamlining or reducing" clean water standards.

The administration's intent to loosen environmental standards that apply to data centers emerges amidst explosive growth in the data center industry. According to Lawrence Berkely National Laboratory's 2024 "Report on U.S. Data Center Energy Use", the facilities used about 4.4% of total U.S. electricity in 2023 and are on track to consume 6.7 to 12% of total U.S. electricity by 2028.⁵ Further, large data centers can consume up to 5 million gallons of water per day.⁶ These facilities place heavy demands on our energy grid and water resources, which will increase as the industry grows.

³ <https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf>

⁴ <https://www.federalregister.gov/documents/2025/06/18/2025-11190/proposal-to-reissue-and-modify-nationwide-permits>

⁵ <https://www.energy.gov/articles/doe-releases-new-report-evaluating-increase-electricity-demand-data-centers>

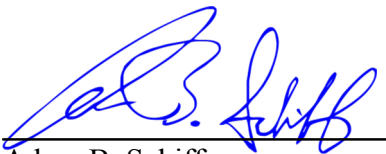
⁶ <https://www.eesi.org/articles/view/data-centers-and-water-consumption>

While data centers could currently qualify under nationwide permits if they impact 0.5 acres or fewer of protected waters, many tech companies have announced plans to build facilities that exceed 1,000 or even 2,000 acres. This significant footprint is all but guaranteed to pose environmental impacts that are more than minimal. Further, the potential impacts of significant data center facilities can vary wildly depending on the scale, location, and characteristics of each data center – for example, how close they are to protected waters of the United States.

Consequently, we request that USACE explain how it will implement the president's executive order and how that executive order will interact with the agency's recent proposed rule regarding nationwide permits. We also request that EPA provide information on how the agency intends to alter or rescind rules promulgated under the Clean Water Act. Finally, we ask both agencies to explain how you will continue to protect water quality as you work to implement the president's executive order.

To protect public health and the environment, Americans need USACE and EPA to fulfill their statutory obligations under the Clean Water Act. Any attempt to weaken the protections of the Clean Water Act necessitates a thorough examination by Congress, and the growth of the data center industry must not be used as an excuse to justify a harmful anti-environment agenda. Thank you for your consideration and response.

Sincerely,

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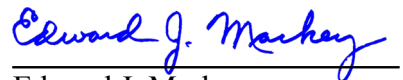
Adam B. Schiff
United States Senator

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Sheldon Whitehouse
United States Senator

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Chris Van Hollen
United States Senator

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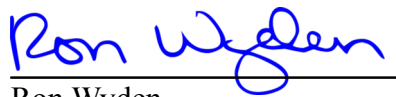
Edward J. Markey
United States Senator

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Kirsten Gillibrand
United States Senator


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Alex Padilla
United States Senator



Ron Wyden

United States Senator



Jeanne Shaheen

United States Senator